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7 DATAROBOT, INC.

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10
11 CHAD FITE,

12 Plaintiff,

13 vs.

14 DATAROBOT, INC.,

15 Defendant.

Case No. **4:20-CV-01157-KAW**
DEFENDANT'S ANSWER TO
COMPLAINT

Action Filed: 02/13/20

Defendant DataRobot, Inc. (“Defendant”) hereby responds to Plaintiff Chad Fite’s (“Plaintiff”) Complaint. The numbers assigned to the following paragraphs correspond to the numbered paragraphs in Plaintiff’s Complaint. To the extent that any allegation in Plaintiff’s Complaint is not specifically admitted, it is denied.

I. INTRODUCTION

1. Answering Paragraph 1 of the Complaint, Defendant admits the allegations contained therein.

2. Answering Paragraph 2 of the Complaint, Defendant admits it ran a credit report on Plaintiff. As to the remaining portions of Paragraph 2, these remaining portions contain argument and/or legal conclusions to which no response is required. To the extent a response is required, however, Defendant denies the remaining portions of Paragraph 2.

3. Answering the first sentence of Paragraph 2, Defendant denies, generally and specifically, each and every allegation contained in this sentence. Answering the second sentence of Paragraph 2, Defendant admits the allegations contained therein.

4. Answering Paragraph 4 of the Complaint, Defendant admits the allegations contained therein.

5. The allegations of Paragraph 5 of the Complaint contain argument and/or legal conclusions to which no response is required. To the extent a response is required, however, Defendant admits it was served with a Complaint alleging the eight causes of action contained in Paragraph 5.

II. PARTIES

6. Answering Paragraph 6 of the Complaint, Defendant admits that it employed Plaintiff as an AI Success Director assigned to its San Francisco office. Defendant lacks sufficient knowledge to admit or deny the remaining allegations of this paragraph and on that basis, denies them.

7. Answering Paragraph 7 of the Complaint, Defendant admits the allegations contained therein.

III. JURISDICTION AND VENUE

8. Paragraph 8 of the Complaint contains argument and/or legal conclusions to which no response is required. To the extent a response is required, however, Defendant admits that diversity jurisdiction exists.

9. Paragraph 9 of the Complaint contains argument and/or legal conclusions to which no response is required. To the extent a response is required, however, Defendant lacks sufficient information to admit or deny the allegations and on that basis denies them.

10. Paragraph 10 of the Complaint contains argument and/or legal conclusions to which no response is required. To the extent a response is required, however, Defendant lacks sufficient information to admit or deny the allegations and on that basis denies them.

11. Answering Paragraph 11 of the Complaint, Defendant admits it is registered with the California Secretary of State to do business and is doing business in California. As to the remaining portions of Paragraph 11, the remaining portions contain argument and/or legal conclusions to which no response is required, To the extent a response is required, however, Defendant denies the remaining allegations of this Paragraph.

12. Answering Paragraph 12 of the Complaint, Defendant admits it hired Plaintiff and assigned him to its San Francisco office, and that Plaintiff was assigned to that office until termination of his employment. As to the remaining portions of Paragraph 12, the remaining portions contain argument and/or legal conclusions to which no response is required. To the extent a response is required, however, Defendant denies them.

13. Paragraph 13 of the Complaint contains argument and/or legal conclusions to which no response is required. To the extent a response is required,

1 however, Defendant lacks sufficient information to admit or deny the allegations
2 and on that basis denies them.

3 14. Paragraph 14 of the Complaint contains argument and/or legal
4 conclusions to which no response is required. To the extent a response is required,
5 however, Defendant lacks sufficient information to admit or deny the allegations
6 and on that basis denies them.

7 **IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

8 15. Answering Paragraph 15 of the Complaint, Defendant lacks sufficient
9 information to admit or deny the allegations and on that basis denies them.

10 **V. STATEMENT OF THE CASE**

11 16. Answering Paragraph 16 of the Complaint, Defendant currently lacks
12 sufficient information to admit or deny the allegations and on that basis denies
13 them.

14 17. Answering Paragraph 17 of the Complaint, Defendant admits that
15 Plaintiff had an interview by videoconference on February 15, 2019 with Paul
16 Auffermann. With respect to the remaining allegations in Paragraph 17, Defendant
17 currently lacks sufficient information to admit or deny the allegations and on that
18 basis denies them.

19 18. Answering Paragraph 18 of the Complaint, Defendant admits that
20 Plaintiff met with several other people associated with Defendant and that Plaintiff
21 had an interview by videoconference on February 26, 2019 with Razi Raziuddin.
22 With respect to the remaining allegations in Paragraph 18, Defendant currently
23 lacks sufficient information to admit or deny the allegations and on that basis denies
24 them.

25 19. Answering Paragraph 19 of the Complaint, Defendant admits that
26 Plaintiff met with Gourab De on March 6, 2019 and met with Yong Kim by
27 videoconference on March 22, 2019. With respect to the remaining allegations in
28 Paragraph 19, Defendant currently lacks sufficient information to admit or deny the

1 allegations and on that basis denies them.

2 20. Answering Paragraph 20 of the Complaint, Defendant admits Plaintiff
3 met Ofer Goldstein by videoconference on March 27, 2019. With respect to the
4 remaining allegations in Paragraph 20, Defendant currently lacks sufficient
5 information to admit or deny the allegations and on that basis denies them.

6 21. Answering Paragraph 21 of the Complaint, Defendant admits that
7 Plaintiff met with Rishabh Raman by videoconference on March 29, 2019. With
8 respect to the remaining allegations in Paragraph 21, Defendant currently lacks
9 sufficient information to admit or deny the allegations and on that basis denies
10 them.

11 22. Answering Paragraph 22 of the Complaint, Defendant admits that
12 Plaintiff met with Marcus Braun on April 3, 2019. With respect to the remaining
13 allegations in Paragraph 22, Defendant currently lacks sufficient information to
14 admit or deny the allegations and on that basis denies them.

15 23. Answering Paragraph 23 of the Complaint, Defendant lacks sufficient
16 information to admit or deny the allegations and on that basis denies them.

17 24. Answering Paragraph 24 of the Complaint, Defendant admits that
18 Plaintiff spoke to Mr. Harrison on April 5, 2019. With respect to the remaining
19 allegations in Paragraph 24, Defendant currently lacks sufficient information to
20 admit or deny the allegations and on that basis denies them.

21 25. Answering Paragraph 25 of the Complaint, Defendant admits that on
22 April 10, 2019, it offered Plaintiff the position of AI Success Director, that the base
23 salary offered was \$200,000 and that Plaintiff accepted that offer on April 13, 2019,
24 with a projected start date of April 29. Defendant denies, generally and specifically,
25 each and every other allegation contained in this Paragraph.

26 26. Answering Paragraph 26 of the Complaint, Defendant lacks sufficient
27 information to admit or deny the allegations and on that basis denies them.
28

27. Answering Paragraph 27 of the Complaint, Defendant denies, generally and specifically, each and every allegation contained in this Paragraph.

28. Answering Paragraph 28 of the Complaint, Defendant denies, generally and specifically, each and every allegation contained in this Paragraph.

29. Answering Paragraph 29 of the Complaint, Defendant admits that on April 25, 2019, it informed Plaintiff that he had to be in Boston for orientation on April 29, 2019 and that he attended the orientation in Boston from April 29, 2019 through May 1, 2019. Defendant also admits that it instructed Plaintiff to send two e-mails to Jeremy Achin on April 29, 2019 and May 3, 2019. With respect to the remaining allegations in Paragraph 29, Defendant currently lacks sufficient information to admit or deny the allegations and on that basis denies them.

30. Answering Paragraph 30 of the Complaint, Defendant admits that on April 30, 2019, Plaintiff went to dinner with three colleagues. Defendant further admits that on May 3, 2019, Plaintiff submitted a request for reimbursement for the cost of the dinner as well as for his airfare, hotel accommodations and ground transportation. Defendant denies, generally and specifically, each and every other allegation contained in this Paragraph.

31. Answering Paragraph 31 of the Complaint, Defendant admits the allegations contained therein.

32. Answering Paragraph 32 of the Complaint, Defendant admits the allegations contained therein.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

UNLAWFUL USE OF CONSUMER CREDIT REPORT

(Labor Code § 1024.5)

33. Answering Paragraph 33 of the Complaint, Defendant incorporates its responses to the allegations in paragraphs 1-31, as if fully stated herein.

1 34. Paragraph 34 of the Complaint contains arguments and/or legal
 2 conclusions to which no response is required. To the extent a response is required,
 3 however, Defendant responds that the Labor Code speaks for itself.

4 35. Answering Paragraph 35 of the Complaint, Defendant denies,
 5 generally and specifically, each and every allegation contained in this paragraph.

6 36. Paragraph 36 of the Complaint contains arguments and/or legal
 7 conclusions to which no response is required. To the extent a response is required
 8 however, Defendant denies, generally and specifically, each and every allegation
 9 contained in this paragraph.

10 37. Answering Paragraph 37 of the Complaint, Defendant denies,
 11 generally and specifically, each and every allegation contained in this paragraph.

12 38. Paragraph 38 of the Complaint contains arguments and/or legal
 13 conclusions to which no response is required. To the extent a response is required
 14 however, Defendant denies, generally and specifically, each and every allegation
 15 contained in this paragraph.

16 39. Paragraph 39 of the Complaint contains arguments and/or legal
 17 conclusions to which no response is required. To the extent a response is required
 18 however, Defendant denies, generally and specifically, each and every allegation
 19 contained in this paragraph.

20 **SECOND CAUSE OF ACTION**

21 **VIOLATION OF THE CCRAA**

22 **(CIVIL CODE § 1785.20.5)**

23 40. Answering Paragraph 40 of the Complaint, Defendant incorporates its
 24 responses to the allegations in paragraphs 1-31, as if fully stated herein.

25 41. Paragraph 41 of the Complaint contains arguments and/or legal
 26 conclusions to which no response is required. To the extent a response is required,
 27 however, Defendant responds that the Civil Code speaks for itself.
 28

1 42. Paragraph 42 of the Complaint contains arguments and/or legal
2 conclusions to which no response is required. To the extent a response is required,
3 however, Defendant responds that the Civil Code speaks for itself.

4 43. Answering Paragraph 43 of the Complaint, Defendant admits that it
5 requested a consumer credit report regarding Plaintiff. Except as specifically
6 admitted, Defendant denies each and every allegation contained in this paragraph.

7 44. Paragraph 44 of the Complaint contains arguments and/or legal
8 conclusions to which no response is required. To the extent a response is required
9 however, Defendant denies, generally and specifically, each and every allegation
10 contained in this paragraph.

11 45. Answering Paragraph 45 of the Complaint, Defendant denies,
12 generally and specifically, each and every allegation contained in the first sentence
13 of Paragraph 45. As to the remaining portions of Paragraph 45, these remaining
14 portions contain argument and/or legal conclusions to which no response is
15 required. To the extent a response is required however, Defendant denies, generally
16 and specifically, each and every allegation contained in this paragraph.

17 46. Paragraph 46 of the Complaint contains arguments and/or legal
18 conclusions to which no response is required. To the extent a response is required
19 however, Defendant denies, generally and specifically, each and every allegation
20 contained in this paragraph.

21 47. Paragraph 47 of the Complaint contains arguments and/or legal
22 conclusions to which no response is required. To the extent a response is required
23 however, Defendant denies, generally and specifically, each and every allegation
24 contained in this paragraph.

25 48. Paragraph 48 of the Complaint contains arguments and/or legal
26 conclusions to which no response is required. To the extent a response is required
27 however, Defendant denies, generally and specifically, each and every allegation
28 contained in this paragraph.

THIRD CAUSE OF ACTION
DISABILITY DISCRIMINATION
(Government Code § 12940)

49. Answering Paragraph 49 of the Complaint, Defendant incorporates its responses to the allegations in paragraphs 1-31, as if fully stated herein.

50. As to the first two sentences of Paragraph 50, these two sentences of the Complaint contain arguments and/or legal conclusions to which no response is required. As to the third sentence of Paragraph 50, Defendant lacks sufficient knowledge to admit or deny, and on that basis denies them. To the extent a response is required however, Defendant denies, generally and specifically, each and every remaining allegation contained in this paragraph.

51. Answering Paragraph 51 of the Complaint, as to whether Plaintiff had a history of disability, Defendant lacks sufficient knowledge to admit or deny, and on that basis denies. As to the remainder of Paragraph 51, Defendant denies, generally and specifically, each and every allegation contained therein.

52. Answering Paragraph 52 of the Complaint, Defendant denies, generally and specifically, each and every allegation contained in this paragraph.

53. Answering Paragraph 53 of the Complaint, Defendant lacks sufficient information to admit or deny and on that basis denies them.

54. Answering Paragraph 54 of the Complaint, Defendant denies, generally and specifically, each and every allegation contained in this paragraph.

55. Paragraph 55 of the Complaint contains arguments and/or legal conclusions to which no response is required. To the extent a response is required however, Defendant denies, generally and specifically, each and every allegation contained in this paragraph.

56. Paragraph 56 of the Complaint contains arguments and/or legal conclusions to which no response is required. To the extent a response is required however, Defendant denies, generally and specifically, each and every allegation

1 contained in this paragraph.

2 57. Paragraph 57 of the Complaint contains arguments and/or legal
3 conclusions to which no response is required. To the extent a response is required
4 however, Defendant denies, generally and specifically, each and every allegation
5 contained in this paragraph.

6 58. Paragraph 58 of the Complaint contains arguments and/or legal
7 conclusions to which no response is required. To the extent a response is required
8 however, Defendant denies, generally and specifically, each and every allegation
9 contained in this paragraph.

10 **FOURTH CAUSE OF ACTION**

11 **FAILUJRE TO ENGAGE IN THE INTERACTIVE PROCESS**

12 **(Government Code § 12940)**

13 59. Answering Paragraph 59 of the Complaint, Defendant incorporates its
14 responses to the allegations in paragraphs 1-31, as if fully stated herein.

15 60. Paragraph 60 of the Complaint contains arguments and/or legal
16 conclusions to which no response is required.

17 61. Answering Paragraph 61 of the Complaint, Defendant denies,
18 generally and specifically, each and every allegation contained in this paragraph.

19 62. Answering Paragraph 62 of the Complaint, Defendant lacks sufficient
20 information to admit or deny and on that basis denies them.

21 63. Paragraph 63 of the Complaint contains arguments and/or legal
22 conclusions to which no response is required. To the extent a response is required
23 however, Defendant denies, generally and specifically, each and every allegation
24 contained in this paragraph.

25 64. Paragraph 64 of the Complaint contains arguments and/or legal
26 conclusions to which no response is required. To the extent a response is required
27 however, Defendant denies, generally and specifically, each and every allegation
28 contained in this paragraph.

65. Paragraph 65 of the Complaint contains arguments and/or legal conclusions to which no response is required. To the extent a response is required however, Defendant denies, generally and specifically, each and every allegation contained in this paragraph.

66. Paragraph 66 of the Complaint contains arguments and/or legal conclusions to which no response is required. To the extent a response is required however, Defendant denies, generally and specifically, each and every allegation contained in this paragraph.

67. Paragraph 67 of the Complaint contains arguments and/or legal conclusions to which no response is required. To the extent a response is required however, Defendant denies, generally and specifically, each and every allegation contained in this paragraph.

FIFTH CAUSE OF ACTION

WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

68. Answering Paragraph 68 of the Complaint, Defendant incorporates its responses to the allegations in paragraphs 1-31, as if fully stated herein.

69. Answering Paragraph 69, Defendant admits that Plaintiff sought reimbursement for certain expenses, but denies that certain of the expense reimbursements sought were “business expenses.” As to the remainder of Paragraph 60 of the Complaint, it contains arguments and/or legal conclusions to which no response is required.

70. Paragraph 70 of the Complaint contains arguments and/or legal conclusions to which no response is required.

71. Paragraph 71 of the Complaint contains arguments and/or legal conclusions to which no response is required.

72. Answering Paragraph 72 of the Complaint, Defendant denies, generally and specifically, each and every allegation contained in this paragraph.

73. Paragraph 73 of the Complaint contains arguments and/or legal conclusions to which no response is required. To the extent a response is required however, Defendant denies, generally and specifically, each and every allegation contained in this paragraph.

74. Paragraph 74 of the Complaint contains arguments and/or legal conclusions to which no response is required. To the extent a response is required however, Defendant denies, generally and specifically, each and every allegation contained in this paragraph.

75. Paragraph 75 of the Complaint contains arguments and/or legal conclusions to which no response is required. To the extent a response is required however, Defendant denies, generally and specifically, each and every allegation contained in this paragraph.

76. Paragraph 76 of the Complaint contains arguments and/or legal conclusions to which no response is required. To the extent a response is required however, Defendant denies, generally and specifically, each and every allegation contained in this paragraph.

SIXTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES DUE

(Labor Code §§ 1182.11-1182.13, 1194 and 1194.2)

77. Answering Paragraph 77 of the Complaint, Defendant incorporates its responses to the allegations in paragraphs 1-31, as if fully stated herein.

78. Paragraph 78 of the Complaint contains arguments and/or legal conclusions to which no response is required.

79. Paragraph 79 of the Complaint contains arguments and/or legal conclusions to which no response is required.

80. Paragraph 80 of the Complaint contains arguments and/or legal conclusions to which no response is required. To the extent a response is required however, Defendant denies, generally and specifically, each and every allegation

1 contained in this paragraph.

2 81. Paragraph 81 of the Complaint contains arguments and/or legal
3 conclusions to which no response is required. To the extent a response is required
4 however, Defendant denies, generally and specifically, each and every allegation
5 contained in this paragraph.

6 82. Paragraph 82 of the Complaint contains arguments and/or legal
7 conclusions to which no response is required.

8 83. Paragraph 83 of the Complaint contains arguments and/or legal
9 conclusions to which no response is required.

10 **SEVENTH CAUSE OF ACTION**

11 **FAILURE TO INDEMNIFY FOR BUSINESS-RELATED EXPENSES**

12 **(Labor Code § 2802)**

13 84. Answering Paragraph 84 of the Complaint, Defendant incorporates its
14 responses to the allegations in paragraphs 1-31, as if fully stated herein.

15 85. Paragraph 85 of the Complaint contains arguments and/or legal
16 conclusions to which no response is required.

17 86. Answering Paragraph 86 of the Complaint, Defendant denies,
18 generally and specifically, each and every allegation contained in this paragraph.

19 87. Paragraph 87 of the Complaint contains arguments and/or legal
20 conclusions to which no response is required. To the extent a response is required
21 however, Defendant denies, generally and specifically, each and every allegation
22 contained in this paragraph.

23 88. Paragraph 88 of the Complaint contains arguments and/or legal
24 conclusions to which no response is required. To the extent a response is required
25 however, Defendant denies, generally and specifically, each and every allegation
26 contained in this paragraph.

EIGHTH CAUSE OF ACTION**FAILURE TO PAY WAGES UPON TERMINATION****(Labor Code §§ 201 and 203)**

89. Answering Paragraph 89 of the Complaint, Defendant incorporates its responses to the allegations in paragraphs 1-31, as if fully stated herein.

90. Paragraph 90 of the Complaint contains arguments and/or legal conclusions to which no response is required.

91. Paragraph 91 of the Complaint contains arguments and/or legal conclusions to which no response is required.

92. Answering Paragraph 92, Defendant admits that it terminated Plaintiff's employment. As to the remaining portions of Paragraph 92 of the Complaint, it contains arguments and/or legal conclusions to which no response is required. To the extent a response is required however, Defendant denies, generally and specifically, each and every allegation contained in this paragraph.

VII. DAMAGES

93. Paragraph 93 of the Complaint contains arguments and/or legal conclusions to which no response is required. To the extent a response is required however, Defendant denies, generally and specifically, each and every allegation contained in this paragraph.

94. Paragraph 94 of the Complaint contains arguments and/or legal conclusions to which no response is required. To the extent a response is required however, Defendant denies, generally and specifically, each and every allegation contained in this paragraph.

95. Answering Paragraph 95, as to the first sentence, Defendant lacks sufficient information to admit or deny, and on that basis denies. As to the remaining portions of Paragraph 95 of the Complaint, it contains arguments and/or legal conclusions to which no response is required. To the extent a response is required however, Defendant denies, generally and specifically, each and every

allegation contained in this paragraph.

PRAYER

Answering the prayer for relief, Defendant denies each and every allegation contained in the prayer. Further, Defendant specifically denies the following: that Plaintiff is entitled to any of the relief requested in the Complaint from Defendant; that Plaintiff has been damaged by the acts of Defendant in any amount whatsoever; that Plaintiff is entitled to attorneys' fees and costs; that Plaintiff is entitled to punitive or exemplary damages; and that Plaintiff is entitled to general or special damages.

SEPARATE AND ADDITIONAL DEFENSES

By alleging the Separate and Additional Defenses set forth below, Defendant is not in any way agreeing or conceding that it has the burden of proof or the burden of persuasion on any of these issues.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

1. The Complaint, and each and every cause of action therein, fails to state facts sufficient to constitute a cause, or causes, of action against Defendant.

SECOND AFFIRMATIVE DEFENSE

(Statute of Limitations)

2. The Complaint, and each and every cause of action therein, is barred by the applicable statute(s) of limitations, including, without limitation, California Code of Civil Procedure Sections §§ 335.1, 337, 338, 339, 340, California Civil Code § 52(b)(2), California Government Code §§ 12960(d) and 12965(b), and 42 USC § 2000e-5(e)(1).

THIRD AFFIRMATIVE DEFENSE

(Laches/Waiver/Estoppel/Unclean Hands)

3. The Complaint, and each and every cause of action therein, is barred by the equitable doctrines of laches, waiver, estoppel, and unclean hands.

FOURTH AFFIRMATIVE DEFENSE

(Failure to Fulfill Administrative Prerequisites)

4. Plaintiff is precluded from asserting some or all of Plaintiff's claims to the extent that Plaintiff has failed to satisfy and exhaust the administrative prerequisites for bringing such claims, and/or to the extent the Complaint is based on alleged acts or omissions not encompassed in the charges filed by Plaintiff with the California Department of Fair Employment and Housing or Equal Employment Opportunity Commission.

FIFTH AFFIRMATIVE DEFENSE

(Failure to Pursue Exclusive Remedies of the Workers' Compensation Act)

5. Plaintiff is barred from recovering under the Complaint, in whole or in part, to the extent that Plaintiff has waived any damages or recovery for alleged physical or emotional injury because Plaintiff has failed to pursue exclusive remedies under the California Workers' Compensation Act, California Labor Code § 3200, *et seq.*

SIXTH AFFIRMATIVE DEFENSE

(Reasonable Care/Failure to Complain)

6. The Complaint, and each and every cause of action therein, is barred because (a) Defendant exercised reasonable care to prevent and correct promptly any alleged unlawful behavior; (b) Plaintiff failed to exercise reasonable care, as required by California Labor Code §§ 2853 and 2854; and/or (c) Plaintiff failed to take reasonable advantage of any preventive or corrective opportunities provided by defendant by, *inter alia*, utilizing or exhausting the company's internal complaint procedures or to otherwise notify Defendant of the allegations made in the Complaint.

SEVENTH AFFIRMATIVE DEFENSE**(Fault of Plaintiff and/or Third Parties)**

7. If Plaintiff sustained any damages, which Defendant denies, such damages were proximately caused or contributed to, in whole or in part, by the acts, omissions, culpable conduct, lack of due diligence, negligence, misconduct, and/or bad faith of Plaintiff and/or third parties, or Plaintiff and/or third parties otherwise were at fault. Plaintiff is therefore not entitled to any relief under the Complaint or under any cause of action purported to be alleged against Defendant therein, or Plaintiff's recovery, if any, should thereby be reduced in proportion to plaintiff's fault, or the fault of third parties.

EIGHTH AFFIRMATIVE DEFENSE**(Employment At-Will)**

8. The Complaint, and each and every cause of action therein, is barred because Plaintiff was an employee at will pursuant to California Labor Code § 2922 and was not entitled to continued employment.

NINTH AFFIRMATIVE DEFENSE**(After-Acquired Evidence)**

9. The Complaint, and each and every cause of action therein, is barred to the extent that Defendant has discovered facts, or may later discover facts, which, if known to Defendant prior to Plaintiff's termination of employment, would have created additional grounds or bases for the decision to terminate Plaintiff's employment.

TENTH AFFIRMATIVE DEFENSE**(No Public Policy Violated)**

10. The fifth cause of action is barred because Defendant's conduct did not violate any established public policy.

ELEVENTH AFFIRMATIVE DEFENSE**(No Knowledge of Disability)**

11. The Complaint, and each and every cause of action therein, is barred in whole or in part because, even assuming *arguendo* that Plaintiff was a member of a protected classification by virtue of his alleged disability, Defendant had no knowledge of any such disability.

TWELFTH AFFIRMATIVE DEFENSE**(No Penalties)**

12. The Complaint, and each and every cause of action therein, is barred in whole or in part, on the grounds that Plaintiff is not entitled to general and other penalties under the California Labor Code, including, but not limited to, waiting time penalties under California Labor Code § 203. With respect to waiting time penalties under California Labor Code § 203, Plaintiff was paid all wages owed at termination, and regardless, any alleged failure to pay all wages due at termination was not willful and/or there existed a good faith dispute as to the amount of compensation owed, if any, at the time of termination.

THIRTEENTH AFFIRMATIVE DEFENSE**(No Private Right of Action)**

13. The Complaint, and each and every cause of action therein, is barred in whole or in part, on the grounds that Plaintiff does not have a private right of action under applicable sections of the California Labor Code.

FOURTEENTH AFFIRMATIVE DEFENSE**(No Proximate Causation)**

14. Any injuries or damages allegedly suffered by Plaintiff were not proximately caused by any acts or omissions of Defendant.

FIFTEENTH AFFIRMATIVE DEFENSE**(Unjust Enrichment)**

15. The Complaint, and each and every cause of action therein, is barred because Plaintiff would be unjustly enriched if Plaintiff is permitted to recover on the Complaint.

SIXTEENTH AFFIRMATIVE DEFENSE**(Failure to Mitigate)**

16. While Defendant denies that Plaintiff has been damaged in any way, if it should be determined that Plaintiff has suffered legally recognizable damages, such damages must be reduced or denied in their entirety to the extent that Plaintiff has failed to take reasonable action to mitigate or minimize Plaintiff's alleged damages.

SEVENTEENTH AFFIRMATIVE DEFENSE**(Failure to State a Claim for Punitive Damages)**

17. The Complaint, and each and every cause of action contained therein, fails to state facts sufficient to entitle Plaintiff to an award of exemplary or punitive damages.

EIGHTEENTH AFFIRMATIVE DEFENSE**(Punitive Damages)**

18. The Complaint, and each and every cause of action contained therein, fails to state facts sufficient to entitle Plaintiff to an award of exemplary or punitive damages and, in any event, Plaintiff is precluded from recovering punitive damages, either in whole or in part, from Defendant, under the applicable provisions of law, including, but not limited to Article I, Section 10, Article IV, Section 2 and the First, Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution and Article I, Section 7, 9, 15, 17, and Article IV, Section 16 of the California Constitution and California Civil Code Section 3294.

NINETEENTH AFFIRMATIVE DEFENSE

(Other Factors)

19. Even if Plaintiff could prove that disability was a factor in any employment action by Defendant, there were other legitimate factors that motivated the action, although such is not hereby admitted and is specifically denied. Defendant asserts that it would have taken the same action with respect to Plaintiff in the absence of any impermissible motivating factors.

TWENTIETH AFFIRMATIVE DEFENSE

(Inadequate Request for Reasonable Accommodation – Failure to Engage in Interactive Process Cause of Action)

20. The failure to engage in interactive process cause of action is barred because Plaintiff did not inform Defendant that he had any disability and therefore did not adequately request reasonable accommodation for Plaintiff's alleged disability, did not provide adequate documentation showing the need for reasonable accommodation for Plaintiff's alleged disability, and otherwise failed to cooperate in the interactive process that may have been required.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Additional Affirmative Defenses)

21. Defendant presently has insufficient knowledge or information upon which to form a belief as to whether they may have additional, as yet unstated, affirmative defenses available. Defendant reserves the right to assert additional affirmative defenses in the event discovery indicates that it would be appropriate.

PRAYER

WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiff takes nothing by way of the Complaint;
2. That the Complaint be dismissed with prejudice and judgment entered in favor of Defendant;
3. That Defendant be awarded his costs of suit;

1 4. That Defendant be awarded attorneys' fees pursuant to statute and/or
2 contract; and

3 5. For such other and further relief as the Court deems just and proper.
4

5 DATED: May 1, 2020

DAVIS WRIGHT TREMAINE LLP
JANET L. GRUMER
VALERIE GALLO

8 By: /s/ Valerie Gallo

9 Valerie Gallo

10 Attorneys for Defendant
11 DATAROBOT, INC.
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